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EX PARTE OR LATE FILED

December 17, 1999

RECEIVED**DEC 17 1999****FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Application by New York Telephone Company (d/b/a Bell Atlantic - New York), et al., for Authorization To Provide In-Region, InterLATA Services in New York, Docket No. 99-295 -- Separate Affiliate Proposal

Dear Ms. Salas:

The Commission has asked for comments on Bell Atlantic-New York's ("BA-NY") statement that it is willing to establish a separate affiliate to provide advanced services, and that operation of such an affiliate would ensure non-discriminatory provisioning of elements necessary to provide advanced services to competing providers.

MCI WorldCom believes that provision of advanced services through a separate affiliate would provide modest but real protections against backsliding in provisioning and other operations support systems ("OSS") for certain kinds of advanced services. We therefore believe that BA-NY should be encouraged to take such a step. However, this step is entirely unrelated to the question of whether BA-NY has satisfied its checklist obligations to provide nondiscriminatory and reasonable access at cost-based rates to loops, to DSLAMs (when required), and to the OSS, including in particular an adequate loop qualification database, that competitors need in order to offer advanced services using unbundled network elements.

The current docket presents a case in which real competitors have sought access to loops for provisioning advanced services, and where there is dispute in the record concerning BA-NY's ability to deliver those loops. As a matter of law, if the Commission determines that the checklist has not been met, an applicant for section 271 approval cannot be allowed to offer future compliance as a substitute for current satisfaction of the obligations set out in the section 271 checklist. Such substitution of promise for performance would be directly contrary to the plain words of section 271, which require that an applicant "fully implement" the requirement that it "provide" network elements before entry. The Commission has repeatedly stressed that these provisions mean that the BOC must prove as a practical matter that each checklist item is currently available in commercially reasonable quantities. Promises of future compliance are not enough – they are entirely irrelevant to the inquiry the Commission must make under the

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checklist. LA I Order ¶ 54; SC Order ¶¶ 78, 81; MI Order ¶¶ 107, 110. The Commission has no discretion to forbear from applying the explicit checklist requirements of section 271.

Although BA-NY's offer does not provide evidence relevant to the Commission's checklist determination, the Commission could consider BA-NY's commitment relevant to the "public interest" inquiry, because it does provide some new ways to identify "backsliding" in the future. Depending upon how it is implemented and enforced, once the transition period is over, BA-NY's promise could have the following beneficial effects:

1. For competitors who choose to offer the same ADSL service over a voice line that BA-NY is offering its retail customers, it would be easier to determine that they are receiving the same non-price terms and conditions that the BA-NY affiliate is receiving. Specifically, it would be easier to police discriminatory provisioning of the relevant OSS, including in particular the use of the critical pre-order loop qualification database. Similarly, it would be easier to police discriminatory loop provisioning practices.

2. Operation of the affiliate would create an incentive on the part of BA-NY to develop an efficient line-sharing process, since BA-NY's affiliate would be forced to use the same process as the CLECs.

3. To the benefit of all advanced services competitors, it would be somewhat easier to police discriminatory collocation practices. Operation of the affiliate also would create an incentive on the part of BA-NY to develop efficient collocation practices, since BA-NY's affiliate would have to collocate in order to deploy DSL-based services in the same manner as CLECs.

While these are welcome safeguards that lead MCI WorldCom to urge the Commission to accept BA-NY's offer, the separate affiliate proposal, even if it were fully operative today, cannot solve all issues affecting the provision of advanced services.

First, the affiliate proposal provides a way to detect discrimination only when the CLEC is offering the same service as BA-NY's affiliate. But one of the principal defects in BA-NY's current offering is that it severely restricts CLECs who wish to offer different services than those offered by BA-NY itself. For example, BA-NY's automated loop qualification database for the most part provides only the information needed to provision the ADSL service BA-NY provides. Competitors who wish to provide different versions of DSL need additional information about such things as working loop length, and they need access to the LFACs database. Operation through an affiliate will not provide a way to detect whether BA-NY is being unreasonable in the way it handles requests for elements to provide non-ADSL advanced services. See, e.g., MCI WorldCom Reply Comments at 21-25.

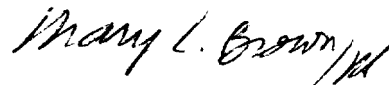
Second, the Commission's recent line-sharing rules must be fully and effectively implemented. MCI WorldCom wants to be able to offer consumers a broad range of services,

and line sharing is necessary in order to serve those customers that want only advanced services from MCI WorldCom.

In sum, BA-NY's proposal is a step forward, but, as we have explained, does not by itself provide a solution for all of the issues concerning advanced services that we have raised.

In accordance with section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, an original and two copies of this letter are being filed with your office.

Sincerely,

A handwritten signature in cursive script that reads "Mary L. Brown". The signature is written in dark ink and is positioned above the typed name.

Mary L. Brown

cc: Chairman William Kennard
Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Gloria Tristani
Kathryn Brown
Dorothy Attwood
Helgi Walker
Jordan Goldstein
Kyle Dixon
Sarah Whitesell
Lawrence Strickling
Robert Atkinson
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Andrea Kearney
William Bailey III